

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DIGITAL MEDIA SOLUTIONS, LLC,)	CASE NO. 1:19-cv-145
)	
Plaintiff,)	JUDGE DAN AARON POLSTER
)	
v.)	MAGISTRATE JUDGE
)	THOMAS M. PARKER
SOUTH UNIVERSITY OF OHIO, LLC,)	
<i>et. al.</i> ,)	
)	
Defendants.)	

RECEIVER'S RESPONSE TO MOTION OF KIMBERLY MILBRANDT, ASHLEY YORK, SARAH WATTS AND BRANDY CHANDLER TO INTERVENE [DOC. 374]

Mark E. Dottore, (the “**Receiver**”) duly appointed and acting Receiver, hereby tenders his response to the Motion of Kimberly Milbrandt, Ashley York, Sarah Watts, and Brandy Chandler to intervene. In short, the Receiver does not object to movants’ intervention, but does object to their effort to do so on a representative basis.

The four movants were all former students of the Argosy University Georgia School of Professional Psychology, who allege that their records were lost as a contractor destroyed records kept on the school’s campus. Accordingly, the movants are eligible to be deemed claimants within the Receivership Estate, and the Receiver has no objection to them appearing and representing their own interests.

Movants, however, seek to do more: they purport to represent *all* students affected by the record destruction (which was addressed by the Receiver in Doc. 356). This is not the first time counsel for Movants has attempted to expand his

representation beyond his actual clients. The Court will recall that, during the course of the first open-court status meeting, Movant's counsel indicated he had two named clients – both students at the Western States School of Law. Yet he purported to be representing *all* students affected by the alleged misappropriation of student stipends. The Court admonished counsel, reminding him his representation was limited to his actual clients alone. The same holds true herein – Movants have not filed any actual claims, nor sought leave to file a class action. Movants have thereby sought to avoid the tests required to assess their sufficiency as class representatives, and would further deprive putative class members of the opportunity to remove themselves from the matter should they so choose. The additional issue associated with Movants' efforts is that they would have the Receiver release private, confidential student information to people other than the actual students to whom the information actually belongs.

The Receiver stands by his counsel's representation to Movants' counsel: he, his staff, and his attorneys will work with any former Argosy University Georgia School of Professional Psychology students who ask for help recovering or rebuilding the lost records. To that end, undersigned counsel has already been contacted by more than a dozen such former students, and has answered their questions promptly and with the best information available. The Court is asked to note that Movants have not attacked the timeliness or professionalism with which the former students have been treated once undersigned counsel stepped in to address the issues.

Accordingly, the Receiver asks that if the Court grants Movants' motion to intervene, it does so with Movants intervening on their own behalf alone and not in a representative capacity.

Date: June 24, 2019

**McCARTHY, LEBIT, CRYSTAL &
LIFFMAN CO., LPA**

/s/ Hugh D. Berkson

Robert T. Glickman (0059579)

Charles A. Nemer (0009261)

Robert R. Kracht (0025574)

Hugh D. Berkson (0063997)

Nicholas R. Oleski (0095808)

101 W. Prospect Ave.

1800 Midland Building

Cleveland, OH 44115

Telephone: (216) 696-1422

Facsimile: (216) 696-1210

Email: rtg@mccarthylebit.com

can@mccarthylebit.com

rrk@mccarthylebit.com

hdb@mccarthylebit.com

nro@mccarthylebit.com

Special Counsel for the Receiver

CERTIFICATE OF SERVICE

The foregoing was electronically filed this 24th day of June, 2019. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Hugh D. Berkson

Hugh D. Berkson (0063997)